

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

SOVERAIN SOFTWARE LLC,

Plaintiff,

v.

CDW CORPORATION,

NEWEGG INC.,

REDCATS USA, INC.

SYSTEMAX INC.,

ZAPPOS.COM, INC.,

REDCATS USA, L.P.,

THE SPORTSMAN'S GUIDE, INC.,

AND

TIGERDIRECT, INC.,

Defendants.

Case No. 6:07-CV-00511-LED

JURY TRIAL DEMANDED

**JOINT MOTION FOR LEAVE TO FILE AMENDED P.R. 4-3 CLAIM
CONSTRUCTIONS AND PREHEARING STATEMENT**

In response to the Court's March 17, 2009 Order (Dkt. No. 189), concerning the number of claim terms in dispute, the parties respectfully request that the Court grant leave to file the attached Amended P.R. 4-3 Joint Claim Construction and Prehearing Statement and attachments (collectively, the "Amended P.R. 4-3 submissions"), in which the number of disputed terms have been reduced from 30 to 14.

As part of their effort to address the concerns expressed in the Court's March 17 Order, the parties have reached agreement on or eliminated a number of disputed terms. The parties also have stipulated (subject to the Court's approval) that except where expressly disputed in the attached Amended P.R. 4-3 submissions, the Court's claim constructions in *Soverain Software LLC v. Amazon.com, Inc.*, 6:04-cv-14 (the "Amazon Markman Order," attached as Appendix 1)

will apply in the present case. In particular, subject to the above condition, claim terms for U.S. Pat. Nos. 5,715,314 and 5,909,492 asserted in the present case will have the same meaning as construed in the *Amazon* Markman Order, and the claim terms common to U.S. Pat. No. 5,708,780 (asserted in Civil Action 6:04-cv-14) and its continuation U.S. Pat. No. 7,272,639 (asserted in the present case) will have the same meaning as construed in the *Amazon* Markman Order.

In addition, the parties have stipulated that Defendants Newegg Inc., Systemax Inc, and TigerDirect, Inc. will preserve their right to appeal such claim constructions adopted from the *Amazon* Markman Order where expressly indicated in Exhibit A in the Amended P.R. 4-3 submissions. Any appeal from such claim constructions is to be limited to the record in *Soverain Software LLC v. Amazon.com, Inc.*, 6:04-cv-14, in particular: the respective P.R. 4-3 submissions, the parties' claim construction briefs, the Markman hearing transcript, and the *Amazon* Markman Order.

Dated: March 23, 2009

Respectfully submitted,

/s/ Ognian V. Shentov (with permission)

Kenneth R. Adamo
State Bar No. 00846960
Lead Attorney
Email: kradamo@jonesday.com

Mark C. Howland
State Bar No. 24027240
Email: mchowland@jonesday.com

JONES DAY
2727 North Harwood Street
Dallas, Texas 75201-1515
Telephone: 214-220-3939
Facsimile: 214-969-5100

Thomas L. Giannetti
NY Attorney Reg. No. 1632819
Email: tlgiannetti@jonesday.com

Ognian V. Shentov
NY Attorney Reg. No. 2867737
Email: ovshentov@jonesday.com

JONES DAY
222 East 41st Street
New York, New York 10017-6702
Telephone: 212-326-3939
Facsimile: 212-755-7306

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on March 23, 2009 a true and correct copy of the foregoing document has been served on all counsel of record via the Court's ECF system.

/s/ Ognian V. Shentov

Ognian V. Shentov